IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 818 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VAJUBHAI JESABHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR US BRAHMBHATT for Appellant(s) : 1,
Ms. HANSABEN PUNANI Ld. APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 17/08/2007

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. The present appeal is preferred by the appellant under sec. 374(2) of CrPC against the judgment and order passed by the learned Addl. Sessions Judge, Veraval in Sessions Case No. 62/2000 dated 12.3.2003 imposing the sentence of 4 years R/I and fine of Rs. 5000/-, in default, further R/I of 9 months under sec. 363 of IPC, R/I of 5 years and fine of Rs. 7000/-, in default, further R/I of one year under sec. 366 of IPC and 8 years R/I and fine of Rs. 25,000/-, in default, further R/I of 2 years under sec. 376 of IPC. It is observed by the learned Addl. Sessions Judge that the sentences imposed on the appellant shall run concurrently.

2. The short facts giving rise to the present appeal are as under:

3. The appellant who was working as Doctor at Malia Hatina gave allurement to the daughter of the complainant on 18.5.2000 and took her from the lawful custody of her parents without their consent and thereby he has committed the offence punishable under sec. 363 of IPC. The appellant along with another accused induced the prosecutrix with a view to have

illicit intercourse with her and kidnapped the prosecutrix from the lawful custody of her parents and thus, the appellant has committed the offence punishable under sec. 366 of IPC. After giving inducement and allurement to the prosecutrix, rape was committed on her by the appellant at different places and, thereby he has also committed the offence punishable under sec. 376 of IPC. The complaint was given by the mother of the prosecutrix Ramaben on 25.5.2000 to the PSI, Chorvad. In pursuance of the complaint given by the mother of the victim, offence was registered against the appellants. The place where the incident took place was visited and the panchnama with regard to the place of the incident was prepared. The clothes put on by the victim as well as the appellant were seized and the panchnama in that regard was prepared. The muddamal article which was seized was sent to the FSL for the purpose of detailed analysis. The statements of the witnesses from the neighbourhood were recorded. The appellants were arrested and subsequently produced before the JMFC, at Malia Hatina, who, under the provisions of Sec. 209 of CrPC committed the case to the Sessions Court, where, it was numbered as Sessions Case No. 62/2000. The

charge against the appellants was framed vide ex. 1 and both the appellants pleaded not guilty to the charge levelled against them. The prosecution has placed reliance on the following oral depositions. They are as under:

1. PW-1 Dr. Kamuben Dahyalal Sagathiya Ex. 17
2. PW-1 Ramaben Amrutlal Ex. 29
3. PW-3 Punam Amrutlal Ex. 33
4. PW-4 Nanalal Parbantbhai Kordiya Ex. 48
5. PW-5 Ranabhai Tapubhai Chavda Ex. 50
6. PW-6 Naranbhai Kalabhai Parmar Ex. 51
7. PW-7 Vinod Dhirubhai Tank Ex. 54
8. PW-8 Laxman Naranbhai Parmar Ex. 56
9. PW-9 Ramjibhai Babubhai Rathod Ex. 57
10. PW-10 Jinabhai Ramabhai Mer Ex. 58
11. PW-11 Ramji Bhikhabhai Ex. 59
12. PW-12 Bhimjibhai Kanjibhai Chauhan Ex. 60
13. PW-13 Madhavaji Shamji Kagathara Ex. 63
14. PW-14 Devjibhai Hirjibhai Langnesa Ex. 64
15. PW-15 Dharmendra Popatlal Dave Ex. 67
16. PW-16 Arjan Nathubhai Kamani Ex. 71
17. PW-17 Amrutbhai Mohanbhai Desai Ex. 77
18. PW-18 Manojbhai Manglaji Balat Ex. 78
19. PW-19 Nanjihai Makanbhai Mardiya Ex. 111

4. The documentary evidence relied upon by the prosecution is produced as under:

1. Medical case papers of the victim Ex. 19
2. Samples for analysis of the victim & receipt of seal Ex. 20
3. Medical certificate of the victim Ex. 21
4. OPD case papers of Accused No. 1 Vaju Jasa ex. 22
5. Medical Test certificate of accused no. 1 Ex. 23
6. Samples for analysis of accused No. 1 and receipt of seal Ex. 24
7. OPD case papers of accused no. 2 Ex. 25

8. Medical Test certificate of accused no. 2 Ex. 26
9. Samples for analysis of accused No. 1 and receipt of seal Ex. 27
10. Complaint of Ramaben Amrutlal Ramjibhai Ex. 30
11. Photograph of victim Ex. 31
12. Application given by complainant to PSI, Chorvad Ex. 32

13. Panchnama of place of incident Ex. 49
14. Panchanama of Ashirvad Guest House where victim and accused no. 1 stayed Ex. 55
15. True copy of abstract of register dated 18.5.2000 of Ashirvad Guest House Ex. 61
16. True copy of abstract of register dated 28.5.2000 of ashirvad Guest House Ex. 62
17. True copy of Death & Birth register for the year October 1984 of Barula Gram Panchaya Ex. 69
18. Birth certificate of the victim Ex. 70
19. Abstract of Register Sr. No. 1286 to 1293 of Barula Pay Centre Shala ex. 73
20. Birth certificate of victim given by Barula Pay-centre School Ex. 74
21. Panchanama of arrest of accused Ex. 79
22. Panchanama of clothes put on by victim and accused Ex. 80
23. Receipts containing signatures of Panchas & Circle Inspector Ex. 81 to 83
24. Receipts containing signatures of panchas & Circle Inspector Ex.96 to 98
25. Police Yadi for medical test of victim Ex. 84, 86, 87
26. Police Yadi for medical test of accused no. 1 Ex. 85, 88
27. Letter written to PSI Chorvad by Circle Inspector, Veraval Ex. 89
28. Xerox copy of insurance policy of Scooter No.GJ-11-D-9852 Ex. 90
29. Copy of receipt of payment of Motor Vehicle Tax used in the incident Ex. 91
30. Xerox copy of RC Book of scooter No. GJ-11-D-9852 Ex. 92
31. Receipt of muddamal sent to FSL93
32. Certificate authorising to break up the seal put on muddamal sent to FSL Ex.94
33. Receipt of FSL Ex. 95
34. Copy of Entry No. 11 dated 25.5.2000 of Chorvad Police Station Ex.101

35. Copy of wireless message sent by I.O. to DSP Ex. 102
36. Copy of wireless message sent to all District Police Stations Ex. 103
37. Copy of wireless message sent to CPI Veraval by PSI Chorvad Ex. 104
38. Letter written to Head Constable Chorvad by PSI Chorvad Ex. 105
39. Copy of forwarding letter by PSI Chorvad with regard to sending of FSL report to APP Veraval Ex. 106
40. Forwarding letter of FSL Ex. 107
41. Report of FSL Ex. 108
42. Forwarding letter of FSL Ex. 109
43. Serological report of FSL Ex. 110
44. Panchanama of samples taken of victim and accused Ex. 112
45. Letter written to CPI Veraval by PSI Chorvad Ex. 113
46. Closing pursis given by complainant side Ex. 114.

At the conclusion of the trial, the further statements of both the accused were recorded under sec. 313 of CrPC.

5. The learned Addl. Sessions Judge after going through the oral deposition and the documentary evidence relied upon by the prosecution held that the appellant induced the prosecutrix on 18.5.2000 at about 23.00 hrs and took her from the lawful custody of her parents and, thereby, he has committed the offence under sec. 363 and 366 of IPC. The ld. Judge held that on 19.5.2000 he took her to the Ashirvad Guest House, Amreli and committed rape on her without

her consent and by using force and, thereby he has also committed offence punishable under sec. 376 of IPC. The ld. Judge held that the prosecution has established the involvement of the appellant in the commission of the offence in a conclusive manner and, therefore, he imposed the sentences under sec. 363, 366 and 376 of IPC on the appellant. Second accused who was also arrested in the commission of the offence, was acquitted by the learned Judge as there was no evidence against him.

6. Learned advocate Mr. US Brahmbhatt representing the appellant submitted that the complaint was given by the mother of the victim vide ex. 30. In her complaint, she has narrated as to how the appellant abducted her daughter from the lawful guardianship and after given inducement repeatedly committed rape on her. The mother of the victim has been examined in the present case vide ex. 29. She has reiterated the story of abduction and rape on her daughter by the appellant. However, the ld. Advocate submitted that the deposition adduced by the mother is full of contradictions, therefore, the same cannot be relied upon. The victim has been examined vide ex. 33. On

perusal of the deposition adduced by her, it becomes clear that she had given consent to the appellant to have the intercourse with her, therefore, the appellant cannot be held guilty for the offence punishable under sec. 376 of IPC. The date of birth as per the prosecution case of the victim was 22.10.1984. The incident took place on 18.5.2000, therefore, the prosecutrix was above 15 years age on the date of the incident. Ld. Advocate submitted that when act of intercourse was committed by the appellant with the consent of prosecutrix, then, he cannot be held guilty for the offence punishable under sec. 376 of IPC. The medical certificate given by the hospital authority also did not inspire confidence so as to indicate the involvement of the appellant in the commission of the offence. The ossification test carried out on the prosecutrix is not full proof. Thus, when there is enough contradictions in the deposition adduced by the prosecution, the benefit of the same is required to be given to the appellant and the appellant is liable to be acquitted for the offences punishable under sec. 363, 366 and 376 of IPC.

7. Learned APP Ms. Hansaben Punani representing the

State vehementally submitted that the deposition adduced by the victim vide ex. 33 makes it abundantly clear that appellant after giving inducement and allurement to the victim took her from the lawful custody of her parents. After taking her from the lawful custody of her parents, he has repeatedly committed rape on her without her consent or willingness. Thus, the basic ingredients of sec. 363, 366 and 376 of IPC are established in the present case. The victim on the date of the incident was approximately of the 16 years age. The mother of the victim has admitted the aforesaid facts and it is also born out from the certificate issued by the Head Master of the school and produced vide ex. 73 and 74. Ld. APP submitted that the mother of the victim has narrated in the complaint vide Ex. 30 as to how her daughter was induced by the appellant and after giving inducement repeated rape was committed on her. The prosecution has examined Ramaben, mother of the victim, vide ex. 29 and she has reiterated in her deposition about the involvement of the appellant in the commission of the offence. The Doctor who had examined the victim and issued necessary certificate in that regard is examined by the prosecution vide ex.

17. She has narrated in her deposition about the history given by the victim. As per the history given by the victim she was given inducement and after giving inducement the appellant has committed rape on her. Ld. APP submitted that the report given by the FSL and produced vide ex. 107, makes it clear that the appellant was involved in the commission of the offence and the necessary corroboration to the prosecution story is established by the report given by FSL. The panchnama with regard to the place of the incident, clothes put on by the victim as well as the appellant also provides necessary corroboration to the prosecution story. Thus, the learned APP submitted that the entire link connecting the appellant with the commission of the offence has been rightly established by the prosecution and, therefore, the judgment and order passed by the ld. Judge requires to be upheld and the appeal do not call for any interference and the same deserves to be dismissed.

8. We have heard Mr. US Brahmbhatt learned advocate for the appellant and Ms. Hansaben Punani learned APP appearing for the respondent-State.

9. We have taken into consideration the rival submissions and perused the entire gamut of oral deposition as well as documentary evidence relied upon by the prosecution. The victim was given inducement by the appellant on 18.5.2000 and took her from the lawful custody of her parents. After taking her from the lawful custody of her parents, he repeatedly committed rape on the victim. The deposition adduced by the victim at Ex. 33 makes it abundantly clear that after giving inducement rape was committed by the appellant. The complaint in that regard was given by the mother of the victim Ramaben vide ex. 30 and on the basis of the complaint, the offence was registered against the appellant. The mother of the victim has been examined vide ex. 29. She has narrated in her deposition as to how the appellant gave inducement to her daughter and took her to various places and committed rape on her against her desire. We have carefully perused the deposition given by Dr. Kamuben Dahyalal Sagathiya at Ex. 17 and certificate at Ex. 22. It has been deposed by the doctor that the victim narrated the story of intercourse but the same was done with her consent. However, this Court cannot

remain oblivious to the fact that the victim was just 16 years of age when she was kidnapped. The abduction was done by the appellant by giving inducement and allurement. Even on the perusal of the deposition given by the victim it becomes clear that initially she was induced by appellant and thereafter she was taken to the Guest House in Amreli. After giving allurements the appellant used force on her and committed rape. Again on 28.5.2000 the appellant committed rape on victim. Thus, on the perusal of the deposition given by victim, it is clear that the tender age of victim was fully exploited by appellant and repeated rape was committed on her against her will and desire. There is no reason for this Court to disbelieve the deposition of the victim. We have also carefully perused the certificate of birth produced in the present case vide ex. 73-74 issued by the Head Master of the School. The necessary abstract is also perused by us in support of the submission that the date of birth of the victim was 22.10.1984. The victim was approximately of 16 years age on the date of the incident. The panch witnesses have turned hostile and not supported the prosecution case but the Investigating Officer examined in the case vide ex. 78

has narrated as to what steps were taken to investigate the case on the receipt of the complaint given by Ramaben. Thereafter, he has narrated in the deposition as to how the panchnama of the place of the incident, panchanama with regard to the clothes put on by the victim as well as accused was prepared in the presence of the panch witnesses. He has further deposed in his testimony that the muddamal article which was seized was sent to FSL for detailed analysis. After receipt of the report from FSL, the appellant was charge-sheeted and produced before the Ld. JMFC, Veraval. Thus, the Investigating Officer has deposed in his testimony about the investigation carried out in the matter on the receipt of the complaint by Ramaben. The deposition adduced by prosecutrix along with the deposition given by Ramaben mother of the prosecutrix, Dr. Kamuben and the Investigating Officer, makes it clear that the appellant was involved in the commission of the offence punishable under sec. 363, 366 and 376 of IPC. The documentary evidence such as the panchnama of the place of incident, the panchnama with regard to the clothes put on by the victim as well as appellant and the FSL report provides necessary corroboration to

the prosecution case. Thus, on overall perusal of the oral deposition and the documentary evidence adduced by the prosecution, we firmly believe that the prosecution has established the case against the appellant by adducing cogent and convincing evidence and, therefore, we do not see any reason to interfere with the order passed by the learned Addl. Sessions Judge, Veraval, convicting the appellant for the offence punishable under sec. 363 of IPC for 4 years R/I and fine of Rs. 5000/-, in default, further R/I of 9 months, under sec. 366 of IPC for 5 years R/I and fine of Rs. 7000/-, in default, further R/I of one year and under sec. 376 of IPC for 8 years R/I and fine of Rs. 25,000/-, in default, further R/I of 2 years.

10. In light of the foregoing discussion, the appeal preferred by the appellant fails and it is hereby dismissed. The mudammal to be disposed of in terms of the order passed by learned Addl. Sessions Judge.

(A.R. DAVE, J.)

(H.B. ANTANI, J.)

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